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SBC LONG DISTANCE, LLC and  
AT&T OPERATIONS, INC.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ERFAN "ERIC" AMIDI, on behalf  
of himself and all others similarly-  
situated.

**Plaintiffs,**

VS.

SBC LONG DISTANCE, LLC, a Delaware Corporation, AT&T OPERATIONS, INC., a Delaware Corporation, and DOES 1 through 100, Inclusive,

## Defendants.

CASE NO. 08CV0858 WQH (WMc)

**DEFENDANTS' ANSWER TO  
PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

Judge: William Q. Hayes

**Class Action Complaint Filed:  
May 13, 2008**

Defendants SBC Long Distance, LLC and AT&T Operations, Inc.

(“Defendants”) hereby answer Plaintiff’s Erfan “Eric” Amidi’s (“Plaintiff”) First Amended Complaint (“Complaint”) as follows:

## **I. INTRODUCTION**

1. Answering Paragraph 1, Defendants admit that Plaintiff purports to bring this action on behalf of a class of persons who worked for them in California in Information Technology (IT) positions identified as Database Administrators, Systems Administrators, Network Administrators and all other exempt jobs converted to non-exempt on January 1, 2008 except for those covered in either the matters of *Huang v. SBC, Inc., et al.*, or *Shoff v. AT&T Services, Inc., et al.* Defendants admit that Plaintiff wishes to define the class period as four years prior to the filing of the Complaint through the date of trial. Except as admitted, Defendants deny each and every allegation contained therein. Defendants further deny that any class exists or should be certified in this case.

2. Answering Paragraph 2, Defendants admit that Plaintiff purports to bring this action as a class action with three subclasses as identified. Except as admitted, Defendants deny each and every allegation contained therein. Defendants further deny that any class or subclasses exist or should be certified in this case.

3. Answering Paragraph 3, Defendants deny each and every allegation contained therein. Defendants further deny that any class exists or should be certified in this case. Defendants further deny that any members of the class Plaintiff purports to represent have been damaged at all.

4. Answering Paragraph 4, Defendants deny each and every allegation contained therein. Defendants further deny that any class exists or should be certified in this case. Defendants further deny that any members of the class Plaintiff purports to represent have been damaged at all.

1               5. Answering Paragraph 5, Defendants admit that Plaintiff purports  
2 to be a representative of a proposed Class. Defendants deny that any class exists or  
3 should be certified in this case.

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5               6. Answering Paragraph 6, Defendants admit that Plaintiff seeks  
6 restitution and compensation for work performed and moneys allegedly due.  
7 Defendants further admit that Plaintiff's Complaint defines the Class Period as four  
8 years prior to the filing of this action through the trial date. Except as admitted,  
9 Defendants deny each and every remaining allegation contained therein.  
10 Defendants further deny that any class exists or should be certified in this case.  
11 Defendants further deny that Plaintiff, or any members of the class he purports to  
12 represent, have been damaged at all.

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14               **II. JURISDICTION AND VENUE**

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16               7. Answering Paragraph 7, Defendants admit and allege that at  
17 times material herein, they have conducted business in good standing within the  
18 State of California. Defendants lack knowledge or information as to the truth of the  
19 allegation that Plaintiff is a citizen of the State of California, and on that basis, deny  
20 this allegation. Defendants expressly deny that they bear liability to the purported  
21 class in excess of the statutory minimum. Defendants further deny that Plaintiff, or  
22 any members of the class he purports to represent, have been damaged at all.  
23 Except as admitted and denied, the allegations set forth contained therein assert  
24 legal conclusions to which no response is required.

25

26               8. Answering Paragraph 8, Defendants admit that they have  
27 conducted business in this judicial district. Except as admitted, the allegations set  
28 forth in this Paragraph contain legal conclusions to which no response is required.

### III. THE PARTIES

#### A. The Plaintiff

9. Answering Paragraph 9, Defendants admit that they have employed Plaintiff as a salaried employee during different periods of time in the four years prior to the filing of this Complaint. Except as admitted, Defendants deny each and every remaining allegation contained therein. Defendants further deny that any class exists or should be certified in this case. Defendants further deny that Plaintiff, or any members of the class he purports to represent, have been damaged at all.

10. Answering Paragraph 10, Defendants deny each and every allegation contained therein. Defendants further deny that any class exists or should be certified in this case.

## B. The Defendants

11. Answering Paragraph 11, defendant SBC Long Distance, LLC admits that it is a limited liability company organized under the laws of the State of Delaware and has its principal place of business in Dublin, California. Defendants admit that SBC Long Distance, LLC previously employed Plaintiff and other employees during the four years prior to the filing of this action. Except as admitted, Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this Paragraph and on that basis deny each and every remaining allegation contained therein. Defendants deny that any class or subclasses exist or should be certified in this case.

1           12. Answering Paragraph 12, defendant AT&T Operations, Inc.  
2 admits that it is incorporated in the State of Delaware and has its principal place of  
3 business in San Antonio, Texas. Defendants further admit that AT&T Operations,  
4 Inc. employed Plaintiff and other employees during the four years prior to the filing  
5 of this action. Except as admitted, Defendants lack sufficient knowledge or  
6 information to form a belief as to the truth of the remaining allegations in this  
7 Paragraph and on that basis deny each and every remaining allegation contained  
8 therein. Defendants deny that any class or subclasses exist or should be certified in  
9 this case.

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11           13. Answering Paragraph 13, Defendants admit that Plaintiff  
12 purports to bring suit against fictitious entities. Except as admitted, Defendants  
13 deny each and every remaining allegation contained therein. Defendants further  
14 deny that any class exists or should be certified in this case.

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16           14. Answering Paragraph 14, the allegations set forth contained  
17 therein assert legal conclusions to which no response is required. To the extent a  
18 response is required, Defendants deny each and every remaining allegation  
19 contained therein.

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21           **IV. GENERAL ALLEGATIONS**

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24           15. Answering Paragraph 15, Defendants admit that California  
25 Labor Code section 1194 provides what it provides.

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1           16. Answering Paragraph 16, Defendants admit that Business &  
2 Professions Code sections 17203 and 17204 provide what they provide.  
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5           17. Answering Paragraph 17, Defendants admit that they employed  
6 Plaintiff in the State of California during portions of the four years prior to the  
7 filing of this Complaint and that Defendants have employed other employees  
8 during the past four years in the State of California. Defendants lack sufficient  
9 knowledge or information to form a belief as to the truth of the remaining  
10 allegations contained therein and on that basis deny each and every remaining  
11 allegation contained therein. Defendants deny that any class exists or should be  
12 certified in this case.

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15           18. Answering Paragraph 18, Defendants deny each and every  
16 allegation contained therein. Defendants further deny that any class exists or  
17 should be certified in this case.

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20           19. Answering Paragraph 19, Defendants admit that in 2008, it  
21 reclassified Plaintiff and other employees as overtime eligible and then paid such  
22 persons overtime compensation for hours worked over 40 in a week or 8 in a day.  
23 Except as admitted, Defendants deny each and every remaining allegation  
24 contained therein. Defendants further deny that any class exists or should be  
25 certified in this case.

1           20. Answering Paragraph 20, Defendants deny each and every  
2 allegation contained therein. Defendants further deny that any class exists or  
3 should be certified in this case.

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6           21. Answering Paragraph 21, Defendants deny each and every  
7 allegation contained therein. Defendants further deny that any class exists or  
8 should be certified in this case. Defendants further deny that Plaintiff, or any  
9 members of the class he purports to represent, have been damaged at all.

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12           22. Answering Paragraph 22, Defendants deny each and every  
13 allegation contained therein. Defendants further deny that any class exists or  
14 should be certified in this case.

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17           23. Answering Paragraph 23, Defendants admit that in 2008, it  
18 reclassified Plaintiff and other employees as overtime eligible and then paid such  
19 persons overtime compensation for hours worked over 40 in a week or 8 in a day.  
20 Except as admitted, Defendants deny each and every remaining allegation  
21 contained therein. Defendants further deny that any class exists or should be  
22 certified in this case.

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25           24. Answering Paragraph 24, Defendants deny each and every  
26 allegation contained therein. Defendants further deny that any class exists or  
27 should be certified in this case. Defendants further deny that Plaintiff, or any of the  
28 members of the class he purports to represent, has been damaged at all.

1           25. Answering Paragraph 25, Defendants deny each and every  
2 allegation contained therein. Defendants further deny that any class exists or  
3 should be certified in this case. Defendants further deny that Plaintiff, or any of the  
4 members of the class he purports to represent, has been damaged at all.

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6           **V. CLASS ACTION ALLEGATIONS**

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9           26. Answering Paragraph 26, Defendants admit that Plaintiff  
10 purports to bring this action on behalf of himself and other individuals as set forth  
11 in this Paragraph. Defendants deny that any class exists or should be certified in  
12 this case.

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15           27. Answering Paragraph 27, Defendants admit that Plaintiff  
16 purports to seek certification of a subclass as set forth in this Paragraph.  
17 Defendants deny that any class or subclass exists or should be certified in this case.

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20           28. Answering Paragraph 28, Defendants admit that Plaintiff  
21 purports to seek certification of a subclass as set forth in this Paragraph.  
22 Defendants deny that any class or subclass exists or should be certified in this case.

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25           29. Answering Paragraph 29, Defendants admit that Plaintiff  
26 purports to seek certification of a subclass as set forth in this Paragraph.  
27 Defendants deny that any class or subclass exists or should be certified in this case.

1           30. Answering Paragraph 30, this Paragraph asserts legal  
2 conclusions to which no response is required.

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5           31. Answering Paragraph 31 and its subparts, Defendants admit that  
6 Plaintiff has brought this action as a putative class action. Defendants further admit  
7 that they employed and paid Plaintiff on a salaried basis as an exempt employee at  
8 certain times during the four years prior to the filing of his Complaint. Defendants  
9 are informed and believe, and on that basis, admit and allege that Plaintiff is  
10 represented by legal counsel who has class action experience in complex civil  
11 litigation and employment law. Except as admitted, Defendants deny each and  
12 every allegation contained therein. Defendants further deny that any class exists or  
13 should be certified in this case. Defendants further deny that Plaintiff, or any  
14 members of the class he purports to represent, have been damaged at all.

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17           32. Answering Paragraph 32, Defendants lack sufficient knowledge  
18 or information to form a belief as to the truth of the allegations contained therein  
19 and on that basis deny each and every allegation contained therein.

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21           **VI. CAUSES OF ACTION**

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24           **FIRST CAUSE OF ACTION**  
              **FAILURE TO PAY OVERTIME CLAIMS**

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26           33. Answering Paragraph 33, Defendants incorporate by reference  
27 their responses to Paragraphs 1 through 32, inclusive, as though fully set forth  
28 herein.

34. Answering Paragraph 34, Defendants deny each and every allegation contained therein. Defendants further deny that any class exists or should be certified in this case. Defendants further deny that Plaintiff, or any members of the class he purports to represent, have been damaged at all.

35. Answering Paragraph 35, Defendants deny each and every allegation contained therein. Defendants further deny that any class exists or should be certified in this case. Defendants further deny that Plaintiff, or any members of the class he purports to represent, have been damaged at all.

**SECOND CAUSE OF ACTION**  
**FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

36. Answering Paragraph 36, Defendants incorporate by reference their responses to Paragraphs 1 through 35, inclusive, as though fully set forth herein.

37. Answering Paragraph 37, Defendants admit that Plaintiff seeks the payment of meal period compensation on behalf of himself and other employees. Defendants further admit that prior to 2008, Plaintiff and other employees were classified as salaried exempt so the meal period requirements, as alleged in the Complaint, did not apply to them. Except as admitted, Defendants deny each and every allegation contained therein. Defendants further deny that any class exists or should be certified in this case. Defendants further deny that Plaintiff, or any members of the class he purports to represent, have been damaged at all.

1                   38. Answering Paragraph 38, Defendants deny each and every  
2 allegation contained therein. Defendants further deny that any class exists or  
3 should be certified in this case. Defendants further deny that Plaintiff, or any  
4 members of the class he purports to represent, have been damaged at all.

**THIRD CAUSE OF ACTION**  
**FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

8                   39. Answering Paragraph 39, Defendants incorporate by reference  
9 their responses to Paragraphs 1 through 38, inclusive, as though fully set forth  
10 herein.

13                   40. Answering Paragraph 40, Defendants admit that Plaintiff seeks  
14 the payment of rest period compensation on behalf of himself and other employees.  
15 Defendants further admit that prior to 2008, Plaintiff and other employees were  
16 classified as salaried exempt employees so the rest period requirements, as alleged  
17 in the Complaint, did not apply to them. Except as admitted, Defendants deny each  
18 and every allegation contained therein. Defendants further deny that any class  
19 exists or should be certified in this case. Defendants further deny that Plaintiff, or  
20 any members of the class he purports to represent, have been damaged at all.

23                  41. Answering Paragraph 41, Defendants deny each and every  
24 allegation contained therein. Defendants further deny that any class exists or  
25 should be certified in this case. Defendants further deny that Plaintiff, or any  
26 members of the class he purports to represent, have been damaged at all.

**FOURTH CAUSE OF ACTION  
KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED  
EMPLOYEE WAGE STATEMENT PROVISIONS**

42. Answering Paragraph 42, Defendants incorporate by reference their responses to Paragraphs 1 through 41, inclusive, as though fully set forth herein.

43. Answering Paragraph 43, Defendants admit that Labor Code section 226(a) provides what it provides. Except as admitted, Defendants deny each and every allegation contained therein. Defendants further deny that any class exists or should be certified in this case. Defendants further deny that Plaintiff, or any members of the class he purports to represent, have been damaged at all.

44. Answering Paragraph 44, Defendants deny each and every allegation contained therein. Defendants further deny that any class exists or should be certified in this case. Defendants further deny that Plaintiff, or any members of the class he purports to represent, have been damaged at all.

**FIFTH CAUSE OF ACTION  
VIOLATIONS OF UNFAIR COMPETITION LAW**

45. Answering Paragraph 45, Defendants incorporate by reference their responses to Paragraphs 1 through 44, inclusive, as though fully set forth herein.

46. Answering Paragraph 46, Defendants deny each and every allegation contained therein. Defendants further deny that any class exists or

1 should be certified in this case. Defendants further deny that Plaintiff, or any  
2 members of the class he purports to represent, have been damaged at all.

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5       47. Answering Paragraph 47, Defendants admit that Plaintiff  
6 purports to bring this cause of action under Business and Professions Code section  
7 17200 *et seq.*, and that Plaintiff seeks certain remedies on behalf of himself and  
8 putative class members under these Code sections. Except as admitted, Defendants  
9 deny each and every allegation contained therein. Defendants further deny that  
10 any class exists or should be certified in this case. Defendants further deny that  
11 Plaintiff, or any members of the class he purports to represent, have been damaged  
12 at all.

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15       48. Answering Paragraph 48, Defendants admit that Plaintiff  
16 purports to bring this cause of action as a cumulative remedy under Business and  
17 Professions Code section 17205, and that Plaintiff seeks certain remedies on behalf  
18 of himself and putative class members under this Code section. Except as admitted,  
19 Defendants deny each and every allegation contained therein. Defendants further  
20 deny that any class exists or should be certified in this case. Defendants further  
21 deny that Plaintiff, or any members of the class he purports to represent, have been  
22 damaged at all.

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25       49. Answering Paragraph 49, Defendants deny each and every  
26 allegation contained therein. Defendants further deny that any class exists or  
27 should be certified in this case. Defendants further deny that Plaintiff, or any  
28 members of the class he purports to represent, have been damaged at all.

1           50. Answering Paragraph 50, Defendants deny that Plaintiff is  
2 entitled to the relief requested and deny each and every allegation contained therein.  
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5           **VII. PRAYER FOR RELIEF**

6           51. Responding to the Prayer for Relief in the Complaint,  
7 Defendants deny that Plaintiff has been or will be damaged in the sums alleged, in  
8 any other sum, or at all, by reason of any act or omission of Defendants or any  
9 officer, agent or employee of Defendants. Defendants further deny that the  
10 elements of relief sought are available to Plaintiff on the claims alleged.

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12           **VIII. AFFIRMATIVE DEFENSES**

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14           **FIRST SEPARATE AND AFFIRMATIVE DEFENSE**

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16           52. The Complaint, and each purported cause of action contained  
17 therein, fails to state facts sufficient to constitute a cause of action.

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19           **SECOND SEPARATE AND AFFIRMATIVE DEFENSE**

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21           53. Each purported cause of action is barred, in whole or in part, by  
22 all applicable statutes of limitations, including but not limited to California Code of  
23 Civil Procedure Sections 335.1, 338, 339 and 340; California Labor Code Sections  
24 200 *et seq.*; and California Business and Professions Code Section 17208.

1                   THIRD SEPARATE AND AFFIRMATIVE DEFENSE

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3       54. Plaintiff, and the putative class, the existence of which is  
4 expressly denied, by reason of their acts, conduct, and omissions, are estopped from  
5 obtaining the relief sought in the Complaint.

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7                   FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

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9       55. Plaintiff, and the putative class, the existence of which is  
10 expressly denied, by reason of their acts, conduct, and omissions, have waived their  
11 rights, if any, to obtain the relief sought in the Complaint.

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13                   FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

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15       56. The Complaint, and each purported cause of action contained  
16 therein, is barred by the doctrine of laches.

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18                   SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

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20       57. The Complaint, and each purported cause of action contained  
21 therein, is barred by the doctrine of unclean hands.

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23                   SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

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25       58. The Complaint, and each purported claim for relief alleged  
26 therein, is barred because any recovery from Defendants would result in the unjust  
27 enrichment of Plaintiff and the classes of persons he purports to represent, the  
28 existence of which is expressly denied.

1                   EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

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3       59.   The Complaint is barred by the doctrines of *res judicata* and/or  
4       collateral estoppel.

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6                   NINTH SEPARATE AND AFFIRMATIVE DEFENSE

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8       60.   The Complaint is barred by the doctrine of judicial estoppel.

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10                  TENTH SEPARATE AND AFFIRMATIVE DEFENSE

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12       61.   The Complaint is barred, in whole or in part, because during the  
13       time Plaintiff was classified as exempt from California's overtime and related  
14       wage-and-hour laws, he was properly classified as exempt. Industrial Welfare  
15       Commission Wage Order 4-2001 paragraphs (1)(A)(2) (administrative exemption);  
16       (1)(A)(2)(b) (learned professional exemption); and/or (1)(A)(3)(h) (computer  
17       professional exemption).

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19                  ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

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21       62.   The Complaint, and each purported cause of action contained  
22       therein, is barred because Plaintiff, and the putative class, the existence of which is  
23       expressly denied, misperformed their respective duties and failed to perform those  
24       duties which Defendants realistically expected each to perform. *Ramirez v.*  
25       *Yosemite Water Co., Inc.*, 20 Cal. 4th 785, 85 Cal. Rptr. 2d 844 (1999).

1                   TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE

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3         63. The named Plaintiff fails to satisfy the prerequisites for class  
4 certification and, therefore, lacks standing and cannot represent the interests of  
5 others as to each of the purported causes of action.

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7                   THIRTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

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9         64. The types of claims alleged by the named Plaintiff on behalf of  
10 himself and the putative class, the existence of which is expressly denied, are  
11 matters as to which individual questions predominate and, accordingly, are not  
12 appropriate for class treatment.

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14                   FOURTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

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16         65. The class of persons that the named Plaintiff purports to  
17 represent, the existence of which is expressly denied, is not so numerous that  
18 joinder is impracticable.

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20                   FIFTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

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22         66. The claims alleged by the named Plaintiff are neither common  
23 to nor typical of those, if any, of the alleged class Plaintiff purports to represent, the  
24 existence of which is expressly denied.

1                   SIXTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

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3         67. The named Plaintiff is an inadequate representative of any  
4         alleged class of persons he purports to represent, the existence of which is expressly  
5         denied.

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7                   SEVENTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

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9         68. Certain of the interests of the putative class of Plaintiff purports  
10        to represent are in conflict with the interests of all or certain sub-groups of the  
11        members of the alleged class of persons which Plaintiff purport to represent, the  
12        existence of which is expressly denied.

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14                   EIGHTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

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17         69. Plaintiff's claim under Labor Code section 226 is barred on the  
18        grounds that there was no "knowing and intentional failure" on Defendants' part to  
19        provide proper itemized earnings statements, nor did Plaintiff or the classes of  
20        person he purports to represent, the existence of which is expressly denied, suffer  
21        injury as a result of any alleged violation of Labor Code section 226.

22  
23                   NINETEENTH SEPARATE AND AFFIRMATIVE DEFENSE

24  
25         70. The fifth purported cause of action under the California  
26        Business and Professions Code is barred because the remedies for the alleged  
27        violations are limited to the remedies expressly provided in the California Labor  
28        Code.

1                   TWENTIETH SEPARATE AND AFFIRMATIVE DEFENSE

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3                 71. Plaintiff's claim for a Court order restoring money to him is a  
4                 claim for restitution damages and is barred because restitution damages under  
5                 California Business and Professions Code sections 17200, *et seq.* deny due process,  
6                 impinge upon procedural and substantive due process rights, and violate the United  
7                 States Constitution.

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9                   TWENTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

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11                72. Plaintiff, as a private litigant, lacks standing to bring a claim for  
12                relief for damages under California Business and Professions Code section 17203.

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14                   TWENTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

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16                73. Plaintiff's claim for relief under California Business and  
17                Professions Code Sections 17200 *et seq.* is barred to the extent that he seeks any  
18                remedy other than those available under the statute, namely restitution and  
19                injunctive relief.

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21                   TWENTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

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23                74. Plaintiff's claim under California Business and Professions  
24                Code Sections 17200 *et seq.* is barred because Plaintiff is not seeking recovery of a  
25                quantifiable sum owed by Defendants to Plaintiff or any of the persons Plaintiff  
26                purports to represent.

1                   TWENTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

2

3                 75. The Complaint, and each claim for relief contained therein, is  
4                 barred to the extent that any of the persons Plaintiff purports to represent have  
5                 released Defendants from liability for such claims, including but not limited to  
6                 accepting severance pay packages to which they were not otherwise entitled. Cal.  
7                 Civ. Code § 1541.

8

9                   TWENTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

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11                 76. The Complaint, and each claim for relief contained therein, is  
12                 barred to the extent that Plaintiff and members of the purported class entered into  
13                 an accord of the claims asserted in this lawsuit, which accord has been satisfied.

14

15                   TWENTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

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17                 77. Plaintiff's claims for penalties are barred because Plaintiff did  
18                 not timely exhaust the administrative prerequisites to filing such claims and/or  
19                 otherwise failed to comply with all the statutory prerequisites to bring such claims.  
20                 Cal. Lab. Code §§ 2699, 2699.3, 2966.5.

21

22                   TWENTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

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24                 78. The Complaint is barred in whole or in part because at all times  
25                 relevant to the Complaint, the defendant who employed Plaintiff, and members of  
26                 the putative class, the existence of which is expressly denied, had an honest, good-  
27                 faith belief that all decisions with respect to employment of Plaintiff and members

1 of the putative class, the existence of which is expressly denied, were made by it  
2 solely for legitimate, business-related reasons and were reasonably based upon the  
3 facts as each understood them.

4

5 **TWENTY-EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE**

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7 79. Plaintiff, and members of the putative class, the existence of which is  
8 expressly denied, is not entitled to any penalty award under sections 203, 226,  
9 226.3, 226.7, and, but not limited to, 1194 of the California Labor Code because, at  
10 all times relevant to the Complaint, the defendants who employed him and  
11 members of the putative class, the existence of which is expressly denied, did not  
12 willfully fail to comply with the compensation provisions of the California Labor  
13 Code or the applicable wage order, but rather each acted in good faith and had  
14 reasonable grounds for believing that it did not violate the compensation provisions  
15 of the California Labor Code or the applicable wage order.

16

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18 **TWENTY-NINTH SEPARATE AND AFFIRMATIVE DEFENSE**

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21 80. Because liability or damages, if any, to each member of the  
22 classes of persons Plaintiff purports to represent may not be determined by a single  
23 jury or on a class-wide basis, allowing this action to proceed as a class action would  
24 violate Defendants' rights under the Seventh and Fourteenth Amendments to the  
25 United States Constitution.

26

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28

1                   THIRTIETH SEPARATE AND AFFIRMATIVE DEFENSE

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3       81. The damages, if any, of Plaintiff, and the putative class  
4 members, the existence of which is expressly denied, are barred or diminished by  
5 reason of their failure to mitigate those damages.

6  
7                   THIRTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

8  
9       82. Plaintiff's claim for waiting time penalties fails because any  
10 failure to pay wages was not willful within the meaning of California Labor Code  
11 section 203.

12  
13                   THIRTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

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15       83. To the extent that Plaintiff seeks any penalties, such claims are  
16 barred by a one-year statute of limitations. Cal. Civ. Proc. Code § 340(a).

17  
18                   THIRTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

19  
20       84. The Complaint, and each purported cause of action contained  
21 therein, is barred by the after-acquired evidence doctrine.

22  
23                   THIRTIETH-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

24  
25       85. To the extent that Plaintiff seeks recovery of attorneys' fees,  
26 Plaintiff, and the putative class, the existence of which is expressly denied, is not  
27 entitled to such recovery.

1 WHEREFORE, Defendants pray for judgment as follows:

2  
3 1. That class certification be denied;

4  
5 2. That Plaintiff take nothing by reason of his Complaint, that the  
6 Complaint be dismissed in its entirety with prejudice, and that judgment be entered  
7 for Defendants;

8  
9 3. That Defendants be awarded their reasonable costs and  
10 attorneys' fees as allowed by statute; and

11  
12 4. That Defendants be awarded such other and further relief as the  
13 Court deems just and proper.

14  
15 DATED: June 20, 2008

J. AL LATHAM, JR.  
DEBORAH S. WEISER  
PAUL, HASTINGS, JANOFSKY & WALKER LLP

16  
17 By: \_\_\_\_\_ /s/  
18 J. AL LATHAM, JR.

19  
20 Attorneys for Defendants  
21 SBC LONG DISTANCE, LLC and  
AT&T OPERATIONS, INC.

**PROOF OF SERVICE**

I am employed in the City and County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is Paul, Hastings, Janofsky & Walker LLP, 515 S. Flower Street, 25th Floor, Los Angeles, California 90071.

On June 20, 2008, I served:

**DEFENDANTS' ANSWER TO PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

on the party(ies) in this action by placing a true copy thereof in a sealed envelope(s), addressed as follows:

**See Attached Service List**

(BY E-FILE) I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel denoted on the attached Service List, and I hereby certify that I have mailed the foregoing document(s) via the United States Postal Service to the non-CM/ECF participants indicated on the attached Service List.

(BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Paul, Hastings, Janofsky & Walker LLP, Los Angeles, California, following ordinary business practices. I am familiar with the practice of Paul, Hastings, Janofsky & Walker LLP for collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

(BY PERSONAL DELIVERY) I then sealed the envelope and caused it to be hand delivered to the offices of the addressee(s) below.

(BY UNITED PARCEL SERVICE) I am readily familiar with the practice of Paul, Hastings, Janofsky & Walker LLP for collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by United Parcel Service for overnight delivery.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court, at whose direction this service was made.

Executed at Los Angeles, California on June 20, 2008.

/s/ Francine Sheldon  
**FRANCINE SHELDON**

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**SERVICE LIST**  
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